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CBN Customer Due Diligence Regulations, 2023 – Key Highlights and Implications for Businesses and Financial Institutions

On 23 June 2023, the CBN issued the Customer Due Diligence Regulations 2023 (the “CDD regulation”), which is a step up to the previously issued three-tiered Know-Your-Customer Regulation issued by the CBN in 2013. The CDD regulation was interestingly passed shortly after the recently enacted Data Protection Act 2023, and at a time when there is an increase in awareness of the concept of data protection in Nigeria.

Leading up to this point, the CBN had issued the AML/CFT/ CPF regulations¹ and explained that the recently promulgated CDD regulation is aimed at providing additional customer due diligence measures for financial institutions and enabling CBN to enforce compliance with customer due diligence measures in the AML/CFT/CPF regulations, 2022.² This is a notable development given that Nigeria is recently included on the grey list by the Financial Action Task Force. Thus, this action by the CBN could, arguably, be one of the measures adopted to address the deficiencies in Nigeria’s AML policies.

This newsletter highlights some of the key provisions of the CDD regulation, the implications for businesses, as well as the obligations of financial institutions, its impact vis a vis the current data protection regime in Nigeria, and comparison with global practices.

Key Highlights and Implications

i. Additional customer due diligence requirements

KYC requirements are not a new development, as the CBN had previously issued the three-tiered KYC requirements to be complied with by banks and financial institutions under its regulations. In this instance, the KYC requirement was based on the categorization of accounts (i.e. the low-value, medium-value, and high-value accounts). Depending on the account held by such customer, the bank is required to obtain the name, place, date of birth, gender, address, telephone number, passport, etc of the customer, and in the instance of medium-value accounts, the customer information obtained is required to be verified against similar information in government official databases.

¹ CBN (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013; Guidance Note on Anti Money Laundering and Combating the Financing of Terrorism Regulations for other Financial Institutions] 2022; Guidelines on Targeted Financial Sanctions Related to Terrorism and Terrorism Financing 2022; and Regulation on Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions 2022.

² Regulation on Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions 2022

The CBN had also issued other circulars directing banks to obtain other information of customers such as their Bank Verification Number (BVN), and public position held etc. More particularly, the CBN has raised the bar in customer due diligence by now requiring banks and financial institutions to obtain the social media handles of their customers.³

In relation to legal persons and legal arrangements (i.e. companies) the CDD regulation requires extensive information to be obtained from companies, and thus persons carrying on business in Nigeria are required to abide by these extensive information requirements. Against the backdrop of the CBN's requirement for companies to provide information on their beneficial owners⁴, the CDD regulation requires companies to submit names and identification documents of the relevant persons having a senior management position in the company. It also has comprehensive information on the verification of customer identity.⁵ It specifically mentions the obligation of wallet providers to verify the phone numbers of their customers through an independent process, including validation against the Nigerian Communications Commission database or geo-mapping.⁶

ii. Any impact on regulated financial institutions and businesses?

Customers of banks, which include both natural persons and corporate entities carrying out business operations in Nigeria are advised to be up to date on the detailed customer verification process of financial institutions in Nigeria which includes utilizing an independent information verification process, such as accessing public and private databases, and visiting the office of the company.⁷

Notably, financial institutions are required to (i) identify and verify the identity of their customers where there is a change in beneficial ownership ("BO") (i.e. in an instance of a transfer/ acquisition transaction); (ii) conduct status enquiry from Credit Risk Management System (CRMS) and at least two Credit Bureaux to determine the credit status of customers; and (iii) maintain a BO register.⁸ Now, businesses have heightened due diligence requirements in terms of information to be obtained from customers.

Additionally, in relation to when a financial institution ("FI") acquires a business and accounts of another FI, the CDD regulation states that it may not be necessary for the identity of the existing customers to be reidentified, provided that all the underlying customers' records are acquired with the business, but the acquiring FI must carry out due diligence enquiries to confirm that the acquired institution had conformed with the requirements of the provisions of the CDD regulation and the CBN AML/CFT/CPF regulations. In such instances, the verification of identity must be undertaken with regards to any transferred customer who was not verified by the transferor- where the money laundering procedures previously undertaken have not been in accordance with the requirements of the CDD regulation or AML/CFT/CPF regulation, or the customer records are not available to the acquiring FI.⁹

It is noteworthy that the failure to comply with the provisions of the CDD regulation attracts administrative sanctions and penalties, as specified in the Banks and Other Financial Institutions ("BOFIA") Act 2020 and particularly in the Schedule to the CCD regulation (the "Schedule").¹⁰ The applicable monetary penalties prescribed in the Schedule differ depending on the class of FI (i.e. Payment Service Banks, Deposit Money Banks, and other FIs), as well as the specific provision of the CDD regulation of which the FI is in default of compliance. These penalties range from a sum of N50,000 (Fifty Thousand Naira) to N20,000,000 (Twenty Million Naira).

³ Paragraph 6, CDD regulation.

⁴ The CBN AML/CFT/CPF regulation 2022, requires banks and other financial institutions to obtain information on the ultimate beneficial owners of companies.

⁵ Paragraph 7, CDD regulation

⁶ Paragraph 7(2)(e), CDD regulation

⁷ Paragraph 7(3) (e) and (g), CDD regulation

⁸ Paragraph 8, CDD regulation, paragraph 10, CBN Guideline on Ultimate Beneficial Ownership of Legal Persons and Legal Arrangements.

⁹ Paragraph 39, CDD regulation

¹⁰ Paragraph 46, CDD regulation

iii. Analyzing the CDD regulation in light of the recently enacted DPA – Striking the balance between data protection and KYC requirements.

The issuance of the CDD regulations has raised major concerns regarding the safety and privacy of individuals' personal information – especially with the enactment of the Nigerian Data Protection Act 2023 (the "DPA"). One of the prominent concerns is the obligation imposed on FIs to collect and verify customers' social media handles as part of their KYC process.¹¹ This is in addition to the collection of the customer's names, date and place of birth, permanent and residential addresses, and BVN amongst others, all of which constitute personal data under the DPA.¹²

While the objective of the CDD regulation is to add an extra layer of protection against potential risks associated with money laundering, terrorism financing, and proliferation financing,¹³ it raises the question of whether the mandatory requirement of procuring social media handles or addresses of customers is necessary to achieve this objective. In particular, the requirement may potentially curtail a customer's rights to freedom of expression and privacy as guaranteed under the Nigerian constitution. A precursory review of CDD practices across other jurisdictions such as the United Kingdom reveals that while there are obligations to obtain information that identifies and verifies a customer's identity, the mandatory collection of social media addresses for this purpose is not stipulated under their extant AML, CFT, and CPF laws.¹⁴

This necessity or otherwise of requesting social media addresses of customers is backed by the principle of data minimization as stipulated under the DPA, which specifically provides that "a data controller or processor shall ensure that personal data is adequate, relevant, and **limited to the minimum necessary for the purposes for which the personal data was collected...**"¹⁵ Simply put, organizations including FIs are to carefully identify and collect only the minimum amount of personal data necessary to verify customer identities and assess risks.

It is noteworthy that the extant law does not expressly prohibit the CBN from requesting social media addresses as part of enhanced customer due diligence measures. Therefore, it can be contended that CBN's implementation of this requirement is not illegal. On the other hand, the legality of this requirement can be challenged against the aforementioned principle of data minimization, as stipulated under the DPA. Thus, one may argue that the collection of social media handles is not entirely necessary for the purpose of conducting customer due diligence – since the CBN already demands the disclosure of other personal data such as a name, BVN etc. Consequently, the added requirement to disclose social media handles may be considered contrary to the DPA and thus illegal. However, the interpretation of the data minimization principle is open to subjectivity – especially when the DPA does not explicitly outline measures to determine instances where the collection of personal data may be deemed unnecessary.

In addition to the above, the Nigeria Data Protection Commission (the "NDPC") has publicly expressed its view that the directive to institutions to obtain social media handles as part of enhanced CDD regulations is contrary to the DPA.¹⁶ It has confirmed its active engagement with the CBN to resolve this issue.

In the interim and pending the outcome of the engagements between the CBN and the NDPC, the CDD regulation and the DPA remain validly in force and as such, FIs are expected to adhere to the KYC obligations under the former, while upholding the data protection principles stipulated in the latter. In order to minimize the risks arising

¹¹ Paragraph 6, CDD regulation

¹² Personal data under the DPA is defined as any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic psychological, cultural, social or economic identity of that individual.

¹³ Article 1 Central Bank of Nigeria (Customer Due Diligence) Regulations, 2023

¹⁴ For instance, see section 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 of the United Kingdom

¹⁵ Section 24 (1) (c) of the DPA

¹⁶ See link to news publication: [The Guardian Nigeria News – 29 June 2023](#)

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therefrom and to maintain a balance between the two laws, FI may adopt the following measures:

Consent: When collecting customer data, FIs should obtain clear and unambiguous consent and ensure that individuals are fully informed of the purposes of such collection.¹⁷

Privacy Impact Assessment: FIs are advised to conduct a privacy impact assessment prior to the implementation of technologies or policies that may involve the processing of customer personal data. This assessment, as well as regular audits, helps identify potential privacy risks and allows institutions to take appropriate measures to mitigate those risks.

Privacy by design approach: This approach involves integrating and embedding data protection and privacy controls into the design of products and services from the outset rather than as an add-on measure.

Risk-based approach: As required under the CDD regulation, FIs should adopt a risk-based approach when conducting customer due diligence. Thus, enhanced due diligence measures such as the requirement of social media handles may be applied where there is a higher risk of money laundering or terrorist financing. Factors relevant to the assessment of risk can include where the potential customer is a politically exposed person (PEP). Adopting this approach could reduce the frequency of possible data breaches as there will be a focus on individuals whose profiles warrant enhanced due diligence measures and processing of their personal data in the public interest.

Conclusion

The CDD regulation is a welcome development towards combatting money laundering and terrorism financing concerns in Nigeria. In particular, this comes at a strategic time when Nigeria has recently been placed on the grey list by the Financial Action Task Force (FATF)¹⁸. Thus, the promulgation and implementation of the CDD regulation is a worthy step towards exiting the grey list and fostering a more positive international outlook for the country.

It is therefore imperative that organizations, particularly FIs, adhere to the KYC obligations stipulated under the CDD regulation; and, at the same time, utilize the information made available to them during customer due diligence in strict compliance with the extant data privacy and protection laws.

¹⁷ See section 25 and 27 of the DPA

¹⁸ See link to the FATF publication : [Jurisdictions under Increased Monitoring - 24 February 2023 \(fatf-gafi.org\)](https://www.fatf-gafi.org/publications/otherpublications/documents/20230224-jurisdictions-under-increased-monitoring-24-february-2023.pdf)